
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

ISAAC RODRIGUEZ,

Petitioner,

versus

JODY UPTON,

Respondent.

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CIVIL ACTION NO. 1:10-CV-157

**MEMORANDUM ORDER OVERRULING PETITIONER’S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Petitioner Isaac Rodriguez, an inmate confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends that the above-styled petition should be dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes Petitioner’s objections are without merit. This type of claim, relating to punishment and not the conviction itself, is not sufficient to invoke the savings clause of Section 2255. *Kinder v. Purdy*, 222 F.3d 209, 213-14 (5th Cir. 2000) (claim of actual innocence of career offender enhancement not properly raised in Section 2241 petition

because petitioner was not claiming actual innocence of crime, only of the enhancement); *see also Dority v. Roy*, 2010 WL 4558884 (5th Cir. Nov. 8, 2010) (claim of actual innocence of armed career offender enhancement is not sufficient to satisfy savings clause).

ORDER

Accordingly, Petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 6th day of May, 2011.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE